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UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

ROY NELSON III, Successor-in-Interest to
Decedent ROY NELSON; ORENELL
STEVENS, individually,

Plaintiffs,

vs.

CITY OF HAYWARD, a municipal corporation;
and DOES 1-50, inclusive, individually and in
their official capacity as police officers for the
City of Hayward,

Defendants.

CASE NO.:

COMPLAINT FOR DAMAGES
(42 U.S.C. Section 1983 and pendent tort
claims)

JURY TRIAL DEMANDED

INTRODUCTION

1
2 1. This case arises out of the December 19, 2015 wrongful death of Roy Nelson, who
3 died in the custody of yet-to-be identified City of Hayward Police Department officers, after Mr.
4 Nelson summoned emergency medical care during a mental health crisis. Shortly after Mr. Nelson
5 contacted 911 for himself, yet-to-be-identified City of Hayward Police officers arrived at the home of
6 Mr. Nelson's ex wife. For unknown reasons, the officers did not wait for an ambulance to transport
7 Mr. Nelson for mental health evaluation but instead handcuffed him and placed him into the backseat
8 of a patrol car. Mr. Nelson's relatives watched him voluntary leave the home in handcuffs, fully
9 compliant with officers. While on the 1.7 mile drive to St. Rose hospital in Hayward, the Officers
10 turned into a secluded parking lot, despite being barely a mile away from the hospital. Without
11 cause, the unidentified officers purportedly pulled Mr. Nelson out of the patrol car and placed the
12 large man in a WRAP restraint device, which they later claim was due to Mr. Nelson trying to kick
13 out the back window, a story that appears to be in stark contrast to Mr. Nelson's physical size,
14 positioning in the car and lack of flexibility.

15 2. Mr. Nelson purportedly became unresponsive as a result of the officers' unnecessary
16 use of the restraint device and the excessive amount of force that was used to place Decedent in the
17 restraint. At 3:10 a.m., more than 90 minutes after Mr. Nelson was taken away in handcuffs, he
18 was admitted to St. Rose Hospital, where he was pronounced dead. The Nelson family has been
19 continually denied answers regarding Mr. Nelson's death and why it took 90 or more minutes to
20 travel the 1.7 miles to the hospital.

21 3. This civil rights and wrongful death action seeks compensatory and punitive damages
22 from Defendants for violating the Fourth and Fourteenth Amendment under the United States
23 Constitution and state law in connection with the death of Roy Nelson, who died as a result of the
24 unlawful and/or negligent conduct by the City of Hayward Police Department.

JURISDICTION

25
26 4. This action arises under Title 42 of the United States Code, § 1983. Title 28 of the
27 United States Code, §§ 1331 and 1343 confers jurisdiction upon this Court. The unlawful acts and
28 practices alleged herein occurred in Hayward, California, which is within the judicial district of this

1 Court. This Court also has supplemental jurisdiction over Plaintiffs' state law causes of action under
 2 28 U.S.C. § 1367.

3 PARTIES

4 5. Decedent ROY NELSON was an individual residing in the State of California.
 5 Decedent was unmarried and died intestate. Decedent did not file any legal actions prior to his death.
 6 To the extent that this action seeks to recover damages for the violation of rights personal to ROY
 7 NELSON, this action is maintained by his Successor-in-Interest Roy Nelson III. Said Plaintiff is the
 8 only surviving child of ROY NELSON and the person with standing to bring this action.

9 6. Plaintiff ROY NELSON III (hereinafter "Plaintiff Roy Nelson III"), is and was at all
 10 times herein mentioned the biological son of Decedent ROY NELSON. Plaintiff Nelson sues in his
 11 individual capacity and as the Successor-in-Interest to Decedent ROY NELSON.

12 7. Plaintiff ORENELL STEVENS (hereinafter "Plaintiff Orenell Stevens"), is and was at
 13 all times herein mentioned the mother of Decedent ROY NELSON and a citizen of the United States.
 14 Plaintiff Orenell Stevens is acting in her individual capacity as the biological mother of Decedent
 15 ROY NELSON. ROY NELSON's biological father predeceased him.

16 8. Defendant CITY OF HAYWARD (hereinafter "City") is a municipal corporation,
 17 duly organized and existing under the laws of the State of California. Under its authority, the County
 18 operates the Hayward Police Department.

19 9. Plaintiffs are ignorant of the true names and capacities of Defendants DOES 1 through
 20 25, inclusive, and therefore sue these defendants by such fictitious names. Plaintiffs allege
 21 Defendants DOES 1 through 25, and each of them were negligent and deliberately indifferent to
 22 ROY NELSON's medical and mental health needs and safety, failed to take measures to get him
 23 medical help, violated his civil rights, wrongfully caused his death, and/or encouraged, directed,
 24 enabled and/or ordered other defendants to engage in such conduct. Plaintiffs further allege that the
 25 DOE Defendants violated Plaintiff's Fourth Amendment right to be free from unreasonable searches
 26 and seizures, including excessive and unwarranted force, in addition to the Fourteenth Amendment
 27 rights to familial association and companionship and caused the wrongful death of ROY NELSON.
 28

1 Plaintiffs will amend this Complaint to state the names and capacities of DOES 1 through 25,
2 inclusive, when they have been ascertained.

3 10. Plaintiffs are ignorant of the true names and capacities of Defendants DOES 26
4 through 50, inclusive, and therefore sue these defendants by such fictitious names. Plaintiffs are
5 informed and believe and thereon allege that each Defendant so named was employed by Defendant
6 City at the time of the conduct alleged herein. Plaintiffs allege that each of Defendants DOES 26-50
7 were responsible for the training, supervision and/or conduct of the police officers and/or agents
8 involved in the conduct alleged herein. Plaintiffs allege that each of Defendants DOES 26 through 50
9 was also responsible for and caused the acts and injuries alleged herein. Plaintiff s will amend this
10 Complaint to state the names and capacities of DOES 26 through 50, inclusive, when they have been
11 ascertained.

12 **ADMINISTRATIVE PREREQUISITES**

13 11. Plaintiffs are required to comply with an administrative tort claim requirement under
14 California law. Plaintiffs have exhausted all administrative remedies pursuant to California
15 Government Code Section 910. Plaintiffs filed a claim against the City of Hayward on June 17,
16 2016. The claim was rejected by the City of Hayward on July 20, 2016.

17 **PRELIMINARY ALLEGATIONS**

18 12. The City of Hayward is a public entity and is being sued under Title 42 U.S.C. § 1983 for
19 Monell liability; 42 U.S.C. § 12132, for violations of the Americans with Disabilities Act; and under
20 the theory of Respondeat Superior, for all actions taken by Defendant agents of the City of Hayward.
21 Defendant DOES 1-25 are being sued under Title 42 U.S.C. § 1983, for violations of the Fourth and
22 Fourteenth Amendments of the United States Constitution; 42 U.S.C. § 12132, for violations of the
23 Americans with Disabilities Act; in addition to violations of California state law, the California Tort
24 Claims Act, and the Government Code for the acts and omissions of Defendants DOES 1-25, and
25 each of them, who at the time they caused Plaintiffs' and Decedent ROY NELSON's injuries,
26 damages and death were duly appointed, qualified and acting officers, employees, and/or agents of
27 City and acting within the course and scope of their employment and/or agency.
28

1 to transport Roy Nelson to the nearby hospital but instead handcuffed him and placed him in
2 the backseat of a patrol car. Roy Nelson was then driven away without incident.

3 18. While enroute to St. Rose hospital, the Officers turned into a secluded parking lot
4 located at Chabot College, despite being only about one (1) mile from the hospital. The Police
5 Department claims that Mr. Nelson began kicking the back windows of the patrol car necessitating
6 their need to take him out of the backseat and place the 350 lbs. man in a WRAP restraint device.
7 This claim is belied by the fact it appears to be physically impossible for a 350 pound man to contort
8 his body in such a way so as to kick the patrol car window while sitting handcuffed and seatbelted.
9 The Department refuses to show the Nelson family dash, lapel or surveillance footage to corroborate
10 their outlandish claims.

11 19. As a result of the Officers' unnecessary restraint and excessive force, Mr. Nelson
12 purportedly became unresponsive. At 2:45 a.m. ambulance personnel arrived at the Chabot College
13 parking lot and began lifesaving measures. At 3:10 a.m., more than 90 minutes after Decedent ROY
14 NELSON was taken away in handcuffs, he was admitted to St. Rose Hospital, where he was
15 pronounced dead.

16 20. Roy Nelson's death was proximately caused by the injuries he suffered at the hands of
17 the Defendant City of Hayward Police Officers. The City of Hayward Police Department has failed to
18 explain to the Nelson family what took place and why there is 90 minutes of time that has yet to be
19 accounted for.

20 21. Plaintiffs allege that each Defendant was on explicit notice that Mr. Nelson was in the
21 midst of a medical emergency when they used excessive force while unreasonably placing him in a
22 WRAP restraint device and failing to wait for an ambulance to transport Mr. Nelson. Plaintiffs further
23 allege that a reasonable officer in Defendants' position would have clearly been on notice that Mr.
24 Nelson did not pose a threat of harm to anyone at the time that he was needlessly and negligently
25 placed in the WRAP restraint device.

26 22. The actions and omissions of City and the DOE Defendant Hayward Police
27 Department Officers were objectively unreasonable under the circumstances, without legal
28 justification or other legal right, done under color of law, within the course and scope of their

29. Plaintiffs seek both survival and wrongful death damages, pursuant to C.C.P. Sections 377.60 and 377.61 and Probate Code Section 6402(b), for the violation of both Decedent's and their rights. Additionally, Plaintiffs are entitled to the reasonable value of funeral and burial expenses pursuant to C.C.P. §§ 377.60 and 377.61 and loss of financial support.

30. Plaintiff Roy Nelson III is further entitled to recover damages incurred by Decedent before he died as a result of being deprived without due process of his right to life, and to any penalties or punitive damages to which Decedent would have been entitled to recover had he lived, including damages incurred by Decedent consisting of pain and suffering he endured as a result of the violation of his civil rights.

31. Plaintiffs found it necessary to engage the services of private counsel to vindicate the rights of Decedent and Plaintiffs' rights under the law. Plaintiffs are therefore entitled to an award of attorneys' fees and/or costs pursuant to statute(s) in the event that he is the prevailing party in this action under 42 U.S.C. § 1983 and 1988.

FIRST CAUSE OF ACTION
(42 U.S.C. section 1983)

(Survival Action: Violation of Decedent's Civil Rights)
(Plaintiff Roy Nelson III, Successor-in- Interest to Decedent ROY NELSON against Defendants DOES 1-25)

32. Plaintiffs hereby re-allege and incorporate by reference herein paragraphs 1 through 31 of this Complaint.

33. The foregoing claim for relief arose in Decedent's favor, and Decedent would have been the Plaintiff with respect to this claim if he had lived.

34. Defendants individually and as peace officers deprived Decedent ROY NELSON of his right to be secure in his person against unreasonable searches and seizures as guaranteed to Decedent under the Fourth Amendment of the United States Constitution and applied to state actors by the Fourteenth Amendment.

35. As a result, Decedent suffered extreme pain and suffering and eventually suffered a loss of life and of earning capacity for which Plaintiffs are entitled to recover damages.

1 36. As a result of the conduct of Defendants, individually and as peace officers, they are
2 liable for Decedent's injuries, either because they were integral participants in the excessive force, or
3 because they failed to intervene to prevent these violations.

4 37. Defendants, individually and as peace officers, knew or should have known that
5 failure to provide timely medical treatment to Decedent could result in further significant injury or the
6 unnecessary and wanton infliction of pain, but disregarded that serious medical need, causing him
7 great bodily harm and death.

8 38. The conduct of Defendants, individually and as peace officers, was willful, wanton,
9 malicious, and done with reckless disregard for the rights and safety of Decedent and therefore
10 warrants the imposition of exemplary and punitive damages as to Defendants.

11 WHEREFORE, Plaintiffs pray for relief as hereinafter set forth.

12
13 **SECOND CAUSE OF ACTION**

14 **(42 U.S.C. § 1983)**

15 **(Violation of Plaintiffs' 14th Amendment Rights/Right to Familial Relationship**
16 **(Plaintiffs Roy Nelson III, Successor-in- Interest to Decedent ROY NELSON; and**
17 **ORENELL STEVENS against Defendants DOES 1-25)**

18 39. Plaintiffs hereby re-allege and incorporate by reference herein paragraphs 1 through
19 38 of this Complaint.

20 40. As a legal cause of Defendants, acting under color of law, acts and/or inactions,
21 Plaintiffs were deprived of their constitutional rights to a familial relationship, and whose deliberate
22 indifference caused injuries which resulted in Decedent's death, all in violation of rights, privileges,
23 and immunities secured by the Fourth and Fourteenth Amendments to the United States Constitution.

24 WHEREFORE, Plaintiffs pray for relief as hereinafter set forth.

25 **THIRD CAUSE OF ACTION**

26 **(42 U.S.C. Section 1983)**

27 **(Monell - Municipal Liability for Unconstitutional Custom or Policy)**
28 **(Plaintiffs ROY NELSON III, Successor-in- Interest to Decedent ROY NELSON against**
 Defendants City and DOES 26-50)

 41. Plaintiffs hereby re-allege and incorporate by reference herein paragraphs 1 through
40 of this Complaint.

1 42. On information and belief Defendants' DOES 1-25 conduct, individually and as peace
2 officers was ratified by City's police department supervisory officers DOES 26-50.

3 43. On information and belief, Defendants were not disciplined for the killing of Decedent
4 ROY NELSON.

5 44. On and for some time prior to December 19, 2015, (and continuing to the present day)
6 Defendants, individually and as peace officers, deprived Plaintiffs and Decedent ROY NELSON of
7 the rights and liberties secured to them by the Fourth and Fourteenth Amendment to the United States
8 Constitution, in that said defendants and their supervising and managerial employees, agents, and
9 representatives, acting with gross negligence and with reckless and deliberate indifference to the rights
10 and liberties of the public in general, and of Plaintiffs and Decedent ROY NELSON, and of persons in
11 their class, situation and comparable position in particular, knowingly maintained, enforced and
12 applied an official recognized custom, policy, and practice of:

- 13 a. Employing and retaining as police officers and other personnel, including
14 Defendants, individually and as peace officers; who at all times material herein
15 knew or reasonably should have known had dangerous propensities for abusing
16 their authority and for mistreating citizens by failing to follow written City Police
17 Department policies, including the use of excessive and deadly force;
18
19 b. Of inadequately supervising, training, controlling, assigning, and disciplining City
20 Police officers, and other personnel, including Defendants who City knew or in the
21 exercise of reasonable care should have known had the aforementioned
22 propensities and character traits, including the propensity for violence and the use
23 of excessive force;
24
25 c. Of inadequately supervising, training, controlling, assigning, and disciplining City
26 Police officers, and other personnel, including Defendants in responding to
27 individuals who were mentally impaired or disabled;
28

- d. By maintaining grossly inadequate procedures for reporting, supervising, investigating, reviewing, disciplining and controlling the intentional misconduct by Defendants who are Police Officers of City;
- e. By failing to discipline City Police Officers' conduct, including but not limited to, unlawful detention and excessive and deadly force;
- f. By ratifying the intentional misconduct of Defendants and other officers who are Police Officers of City;
- g. By having and maintaining an unconstitutional policy, custom and practice of detaining and arresting individuals without probable cause or reasonable suspicion, and using excessive force, including deadly force, which also is demonstrated by inadequate training regarding these subjects. The policies, customs and practices of Defendants were done with a deliberate indifference to individuals' safety and rights; and
- h. By failing to properly investigate claims of unlawful detention and excessive force by City Police Officers.

45. By reason of the aforementioned policies and practices of Defendants, individually and as peace officers, Decedent was severely injured and subjected to pain and suffering and lost his life and earning capacity for which Plaintiffs are entitled to recover damages.

46. Defendants, individually and as peace officers, together with various other officials, whether named or unnamed, had either actual or constructive knowledge of the deficient policies, practices and customs alleged in the paragraphs above. Despite having knowledge as stated above these defendants condoned, tolerated and through actions and inactions thereby ratified such policies. Said defendants also acted with deliberate indifference to the foreseeable effects and consequences of

1 these policies with respect to the constitutional rights of Decedent, Plaintiffs, and other individuals
2 similarly situated.

3 47. By perpetrating, sanctioning, tolerating and ratifying the outrageous conduct and other
4 wrongful acts, Defendants, individually and as peace officers; acted with an intentional, reckless, and
5 callous disregard for the life of Decedent. Each of their actions were willful, wanton, oppressive,
6 malicious, fraudulent, and extremely offensive and unconscionable to any person of normal
7 sensibilities.

8 48. Furthermore, the policies practices, and customs implemented and maintained and still
9 tolerated by Defendants, individually and as peace officers; were affirmatively linked to and were
10 significantly influential force behind the injuries of Decedent and Plaintiffs.

11 49. By reason of the aforementioned acts and omissions of Defendants, individually and
12 as peace officers, Plaintiffs were caused to incur funeral and related burial expenses, loss of gifts and
13 benefits and loss of financial support.

14 50. By reason of the aforementioned acts and omissions of Defendants, individually and
15 as peace officers, Plaintiffs have suffered loss of love, companionship, affection, comfort, care,
16 society, and future support.

17 51. Accordingly, Defendants, individually and as peace officers, each are liable to
18 Plaintiffs for compensatory damages under 42 U.S.C. § 1983.

19 WHEREFORE, Plaintiffs pray for relief as hereinafter set forth.

20
21 **FOURTH CAUSE OF ACTION**
22 **(C.C.P. Section 377.60 and 377.61)**
23 **(Wrongful Death- Negligence)**

24 **(Plaintiffs ROY NELSON III, Successor-in- Interest to Decedent ROY NELSON**
25 **against Defendants DOES 1-25)**

26 52. Plaintiffs re-allege and incorporate by reference herein paragraphs 1 through 51 of this
27 Complaint, except for any and all allegations of intentional, malicious, extreme, outrageous, wanton,
28 and oppressive conduct by defendants, and any and all allegations requesting punitive damages.

SEVENTH CAUSE OF ACTION

(Violation of 42 U.S.C. section 12132)

**(Plaintiff ROY NELSON III, Successor-in- Interest to Decedent ROY NELSON
against CITY and Defendants DOES 1-50)**

66. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 65 of this complaint.

67. As against Defendant CITY, and/or DOES 26-50 in their capacity as official policy-maker(s) for the City of Hayward, Plaintiffs further alleges that said defendants failed to train, supervise, and or discipline Defendant DOES 1-25: in recognizing symptoms of disability under Title II of the Americans With Disabilities Act and from excluding qualified individuals, such as Decedent Roy Nelson, from participating in or denying benefits and services provided by Defendant CITY; or from otherwise discriminating against such qualified individuals with symptoms of disability recognized under Title II of the Americans with Disabilities act, resulting in the use of force against Roy Nelson, during the course of the subject-incident, which ultimately resulted in his death.

68. As against Defendant DOES 1-25, at the time Defendant DOES 1-25 made contact with Decedent Roy Nelson they knew and/or had reason to know he was experiencing a mental crisis and were aware of Decedent disability and the symptoms and manifestations of Decedent recognized disability, and yet these Defendant DOES 1-25 decided to unlawfully transport and use a WRAP device on Decedent, further exacerbating his mental health crisis. In addition, these Defendant Officers failed to provide reasonable accommodations during their encounter and arrest of Decedent Nelson by failing to contact an emergency medical services provider to transport Decedent Nelson to the hospital, as opposed to handcuffing and placing Decedent Nelson in the back of a patrol car, prior to stopping in a parking lot for 90 minutes, during which time Mr. Nelson was purportedly placed in a WRAP device.

1 69. The aforementioned conduct of Defendant DOES 1-25, in failing to make reasonable
2 accommodations for Decedent Nelson denied him the benefits of Defendant CITY OF
3 HAYWARD'S programs and activities, and/or discriminated against Decedent Nelson by reason of
4 his recognized disability

5 WHEREFORE, Plaintiffs pray for relief as hereinafter set forth.
6

7 **JURY DEMAND**

8 70. Plaintiffs hereby demand a jury trial in this action.

9 **PRAYER**

10 WHEREFORE, Plaintiffs pray for relief, as follows:

- 11 1. For general damages in a sum according to proof;
12 2. For special damages in a sum according to proof;
13 3. For punitive damages against Defendant DOES 1-25 in a sum according to proof;
14 4. For reasonable attorney's fees pursuant to 42 U.S.C. Section 1988;
15 5. For any and all statutory damages allowed by law;
16 6. For cost of suit herein incurred; and
17 7. For such other and further relief as the Court deems just and proper.
18

19 **Law Offices of John L. Burris**

20
21 Dated: December 19, 2016

22 /s/ John L. Burris
23 **John L. Burris**
24 Attorneys for Plaintiffs
25 ROY NELSON III, et al.
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